

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL J. AHEARN and U.S. POSTAL SERVICE,
POST OFFICE, Media, Pa.

*Docket No. 96-1281; Submitted on the Record;
Issued September 1, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he had a recurrence of disability effective March 8, 1995 causally related to his August 14, 1992 employment injury.

On August 14, 1992 appellant, then a 24-year-old part-time letter carrier, was injured when his postal vehicle was rear-ended by another car. In a September 30, 1992 report, Dr. John T. Williams, a Board-certified orthopedic surgeon, diagnosed an acute cervical sprain and an acute lumbosacral sprain, both resolving. A November 17, 1992 magnetic resonance imaging (MRI) scan showed mild disc bulging from C3 to C7 with slightly more prominent asymmetrically to the left at C5-C6 causing left neural foraminal encroachment. In a January 12, 1993 report, Dr. Stephen E. Sacks, an osteopath, stated that an electromyogram (EMG) showed a chronic C5-C6, C6-C7 radiculopathy involving the left arm of a moderate nature. The nerve conduction studies were normal. In a May 14, 1993 report, Dr. Richard B. Kanoff, an osteopathic neurosurgeon, reviewed the EMG and the MRI and stated that a left-sided disc herniation was suggested at the C5-C6 level without evidence of cord compromise or abnormal signal intensity. In a June 23, 1993 report, Dr. Won Sik Cynn, a Board-certified radiologist, stated that a myelogram showed a mild degree of compression of the nerve root on the left side of C5-C6 either due to a small herniated nucleus pulposus or bony spurs. In a September 7, 1993 report Dr. Roy M. Lerman, a Board-certified physiatrist, diagnosed left-sided C5-C6 herniated nucleus pulposus offset left with left C6 radiculopathy. Appellant was released to full, unrestricted duty in October 1993. The Office of Workers' Compensation Programs accepted appellant's claim for cervical and lumbosacral sprains and herniated C5-C6 nucleus pulposus. The Office paid temporary total disability compensation for the period May 29 through August 20, 1993. The Office also paid compensation for intermittent periods between February 22 through March 23, 1993 and September 4 through October 15, 1993.

On March 16, 1995 appellant filed a claim for a recurrence of disability effective March 8, 1995. He stated that he was sitting at a meeting when he sneezed. He then had a

sharp, sudden pain at the bottom of his neck and a burning sensation down his arm which were the same symptoms he had after the original employment injury. In a May 18, 1995 decision, the Office rejected the claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and the claimed disability. At the hearing appellant submitted a March 13, 1995 report from Dr. Michael J. O'Connor, a Board-certified neurosurgeon, who reported appellant's flare-up of pain after sneezing. He noted that appellant's left arm was smaller than his right arm. He did not discuss whether the March 8, 1995 incident was causally related to the conditions arising from the August 14, 1992 employment injury. Appellant also submitted depositions from Dr. Anthony DelBorrello, an osteopath, and Dr. O'Connor. In his November 9, 1995 deposition, Dr. DelBorrello related appellant's conditions to the employment injury and stated that the physical injuries would likely cause disability. He did not specifically refer to any recurrence of disability after March 8, 1995 due to sneezing and did not give any rationale in support of his vague, speculative opinion.

In his November 27, 1995 deposition, Dr. O'Connor stated that a prior MRI scan showed that appellant had a significant C5-C6 disc protrusion that was pressing on the left nerve root. He noted that a type of symptom consistent with a pinched nerve root was a recurrence and worsening of pain in the arm after a good, vigorous motion like a sneeze. He indicated that his examination on March 13, 1995 showed appellant had atrophy of the left arm which he related to a nerve to muscle dysfunction that by either disuse or dysfunction of the nerve was causing appellant to lose muscle mass in the arm. He also noted that appellant had muscle spasms in the neck. He concluded that appellant had nerve root compression at the C5-C6 level on the left, most likely due to a herniated disc. He related the condition to appellant's original injury. He stated that appellant's symptoms which recurred in March 1995 were related to the abnormality of the neck. He related appellant's condition after March 8, 1995 to the August 14, 1992 employment injury.

The Board finds that the case is not in posture for decision.

Dr. O'Connor, in his March 13, 1995 report and Dr. DelBorrello, in his November 9, 1995 deposition, described appellant's symptoms after his sneezing incident on March 8, 1995. However, Dr. O'Connor, in his November 27, 1995 deposition, indicated that appellant had a C5-C6 protruding disc which was pressing on the left nerve root which he related to the August 14, 1992 employment injury. He stated that a vigorous movement, such as a sneeze, would cause a recurrence of severe pain along the left arm. He related the recurrence of appellant's pain after March 8, 1995 to the original employment injury. Dr. O'Connor's report therefore presents some rationalized evidence in support of appellant's claim for a recurrence of disability after March 8, 1995. His report is uncontradicted by any other medical evidence of record. Dr. O'Connor's report is insufficient to satisfy appellant's burden of proof but it is sufficient to require further development of the medical evidence.¹ The case must therefore be remanded for further development of the medical evidence to determine whether appellant's disability after March 8, 1995 was a recurrence of disability causally related to his August 14, 1992. After such development, the Office should issue a *de novo* decision.

¹ John J. Carlone, 41 ECAB 354 (1989).

The decisions of the Office of Workers' Compensation Programs, dated February 23, 1996 and May 18, 1995, are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
September 1, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member